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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Dawniell Zavala (State Bar No. 253130)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: dawniell.zavala@hro.com

Attorneys for Plaintiffs,
WARNER BROS. RECORDS INC.; BMG
MUSIC; UMG RECORDINGS, INC.;
SONY BMG MUSIC ENTERTAINMENT;
CAPITOL RECORDS, LLC; and
ATLANTIC RECORDING
CORPORATION

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DIVISION

HRL

WARNER BROS. RECORDS INC., a Delaware
corporation; BMG MUSIC, a New York general
partnership; UMG RECORDINGS, INC., a
Delaware corporation; SONY BMG MUSIC
ENTERTAINMENT, a Delaware general
partnership; CAPITOL RECORDS, LLC, a
Delaware limited liability company; and
ATLANTIC RECORDING CORPORATION, a
Delaware corporation,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CV 08 3993

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Case No. _____
#39484 v1

ORIGINAL

JURISDICTION AND VENUE

1
2 1. This is a civil action seeking damages and injunctive relief for copyright infringement
3 under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

4 2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal
5 question); and 28 U.S.C. § 1338(a) (copyright).

6 3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the
7 true identity of Defendant is unknown to Plaintiffs at this time, on information and belief, Defendant
8 may be found in this District and/or a substantial part of the acts of infringement complained of
9 herein occurred in this District. On information and belief, personal jurisdiction in this District is
10 proper because Defendant, without consent or permission of the copyright owner, disseminated over
11 the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief,
12 such illegal dissemination occurred in every jurisdiction in the United States, including this one. In
13 addition, Defendant contracted with an Internet Service Provider ("ISP") found in this District to
14 provide Defendant with the access to the Internet which facilitated Defendant's infringing activities.

15 **PARTIES**

16 4. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing
17 under the laws of the State of Delaware, with its principal place of business in the State of
18 California.

19 5. Plaintiff BMG Music is a general partnership duly organized and existing under the
20 laws of the State of New York, with its principal place of business in the State of New York.

21 6. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the
22 laws of the State of Delaware, with its principal place of business in the State of California.

23 7. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general
24 partnership, with its principal place of business in the State of New York.

25 8. Plaintiff Capitol Records, LLC is a limited liability company duly organized and
26 existing under the laws of the State of Delaware, with its principal place of business in the State of
27 New York.

9. Plaintiff Atlantic Recording Corporation is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

10. The true name and capacity of Defendant are unknown to Plaintiffs at this time. Defendant is known to Plaintiffs only by the Internet Protocol ("IP") address assigned to Defendant by his or her ISP on the date and time of Defendant's infringing activity. See Exhibit A. Plaintiffs believe that information obtained in discovery will lead to the identification of Defendant's true name.

COUNT I

INFRINGEMENT OF COPYRIGHTS

11. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

12. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright law with respect to certain copyrighted sound recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of Exhibit A.

13. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

14. Plaintiffs are informed and believe that Defendant, without the permission or consent of Plaintiffs, has continuously used, and continues to use, an online media distribution system to download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies the IP address with the date and time of capture and a list of copyrighted recordings that Defendant has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public. Through his or her continuous and ongoing acts of downloading and/or distributing to the public the Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and

1 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive
 2 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are
 3 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously
 4 downloaded and/or distributed to the public additional sound recordings owned by or exclusively
 5 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of
 6 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being
 7 distributed by Defendant.)

8 15. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on
 9 each respective album cover of each of the sound recordings identified in Exhibit A. These notices
 10 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.
 11 These published copies were widely available, and each of the published copies of the sound
 12 recordings identified in Exhibit A was accessible by Defendant.

13 16. Plaintiffs are informed and believe that the foregoing acts of infringement have been
 14 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

15 17. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
 16 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against
 17 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to
 18 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

19 18. The conduct of Defendant is causing and, unless enjoined and restrained by this
 20 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated
 21 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502
 22 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing
 23 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound
 24 recordings made in violation of Plaintiffs' exclusive rights.

25 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

26 1. For an injunction providing:

27 "Defendant shall be and hereby is enjoined from directly or indirectly
 28 infringing Plaintiffs' rights under federal or state law in the
 Copyrighted Recordings and any sound recording, whether now in
 existence or later created, that is owned or controlled by Plaintiffs (or

any parent, subsidiary, or affiliate record label of Plaintiffs) ("Plaintiffs' Recordings"), including without limitation by using the Internet or any online media distribution system to reproduce (*i.e.*, download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload) any of Plaintiffs' Recordings, except pursuant to a lawful license or with the express authority of Plaintiffs. Defendant also shall destroy all copies of Plaintiffs' Recordings that Defendant has downloaded onto any computer hard drive or server without Plaintiffs' authorization and shall destroy all copies of those downloaded recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.


4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: August 21, 2008

HOLME ROBERTS & OWEN LLP

By



DAWNIELL ZAVALA

Attorney for Plaintiffs

WARNER BROS. RECORDS INC.; BMG
MUSIC; UMG RECORDINGS, INC.; SONY
BMG MUSIC ENTERTAINMENT; CAPITOL
RECORDS, LLC; and ATLANTIC RECORDING
CORPORATION

EXHIBIT A**JOHN DOE****IP Address:** 169.233.17.163 2008-05-11 03:24:10 EDT**CASE ID#** 169443646**P2P Network:** GnutellaUS**Total Audio Files:** 1206

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Warner Bros. Records Inc.	Green Day	Basket Case	Dookie	185-457
BMG Music	Republica	Ready to Go	Republica	224-451
UMG Recordings, Inc.	Keane	Somewhere Only We Know	Hopes and Fears	355-429
SONY BMG MUSIC ENTERTAINMENT	Lil' Flip	Sunshine	U Gotta Feel Me	354-119
Capitol Records, LLC	Liz Phair	Everything to Me	Everything to Me (single)	375-882
Atlantic Recording Corporation	INXS	Don't Change	Shabooh Shoobah	42-945
BMG Music	Christina Aguilera	Beautiful	Stripped	326-219
BMG Music	Kelly Clarkson	Walk Away	Breakaway	352-147
BMG Music	Brooks & Dunn	My Maria	Borderline	218-735

COMPLAINT FOR COPYRIGHT INFRINGEMENTCase No. _____
#39484 v1

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS

WARNER BROS. RECORDS INC.; BMG MUSIC; UMG RECORDINGS, INC.; SONY BMG MUSIC ENTERTAINMENT; CAPITOL RECORDS, LLC; and ATLANTIC RECORDING CORPORATION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

Los Angeles County, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT

JOHN DOE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

HOLME ROBERTS & OWEN LLP

Dawniell Zavala (SBN: 253130)

560 Mission Street, 25th Floor

San Francisco, CA 94105-2994

Phone: (415) 268-2000

Fax: (415) 268-1999

ATTORNEYS (IF KNOWN)

HRL

ADR

E-filing

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR (For Diversity Cases Only) PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property <input type="checkbox"/> 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

17 U.S.C. § 501 et seq. — copyright infringement

VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION

DEMAND \$

☐ CHECK YES only if demanded in complaint

UNDER F.R.C.P. 23:

Statutory damages; injunction

JURY DEMAND:

☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT

(CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE August 21, 2008

SIGNATURE OF ATTORNEY OF RECORD

[Signature]